

**Response To Comments Regarding (b)(2) Implementation Decision**  
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Comment	Organization	Response
The yield modeling for the Stanislaus River does not show enough water being provided for instream fishery needs.	DFG	<p>Interior recognizes that it has a responsibility to provide a certain amount of water for Stanislaus River fishery purposes before it has any right to Project water at New Melones. The yield modeling demonstrates that, in some years, New Melones does not have enough water to fulfill even its permit requirements for water quality and fishery needs.</p> <p>In years when New Melones cannot satisfy all its permit requirements, the amount of flow provided for each permit requirement is reduced evenly. In years when New Melones can satisfy its minimum permit conditions (including the 98,300 AF for fishery needs), the models show project purposes receiving the next increment of supply before fish receive additional water, as provided in the 1987 DFG Agreement.</p> <p>In any case, the 1928-34 modeling does not necessarily reflect how Interior will operate New Melones in the future. These issues will be discussed in the stakeholder process for development of a long-term New Melones operations plan.</p>
Upstream storage releases that are diverted by the CVP to San Luis Reservoir should not be counted as (b)(2) water.	DFG	<p>Interior disagrees. Consistent with the Court's Memorandum Opinion, water released for instream, (b)(2) purposes may be diverted for a second purpose downstream. Because it has been used for (b)(2) purposes at one time, it is reasonable for such water to be counted as a (b)(2) use.</p>

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Upstream (b)(2) releases should be allowed to flow through the Delta -- and not be subject to CVP/SWP diversion -- at anytime throughout the year, not just during the February-September period.	DFG	Interior applied this provision to releases from February 1 through September 30 because that is generally when Delta outflows will be needed to move the fish through the Delta into saline water. While Interior considered the suggested approach, Interior does not believe that it would represent the wisest use of the resource in light of the limited biological benefit.
The rationale for allowing upstream releases to flow through the Delta should be expanded to include avoidance of diversion effects on Delta fish.	DFG	Agreed. Reducing diversion impacts on Delta fish may be one of the biological benefits that FWS would determine justified additional Delta outflow is necessary.
COA should be renegotiated to provide an equitable approach to accounting for the effects of the CVPIA on SWP operations.	DFG	Agreed. Interior and DWR already have agreed to begin negotiations to modify the COA.
Using 800,000 AF every year does not implement the statutory language allowing reduced use of (b)(2) supplies.	DFG	As DFG notes, Interior has identified shortage criteria for dry years. While Interior anticipates using the full 800,000 AF in most years, it will rely on the statutory authority to make a finding that less water is needed, if such finding is biologically justified.
Modeling of simulated CVP operations must recognize storage releases for other purposes (e.g. water quality, flood control).	DFG	Agreed. The CVP simulated operations model will acknowledge releases required for other non-(b)(2) purposes.

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During the transition to the hydrologic-year accounting, Interior needs to coordinate between (b)(2) actions and existing fishery flow agreements based on the contract year.	DFG	Interior recognizes the importance of coordination. It believes that the Decision establishes a process that will provide the coordination that DFG seeks. Interior will continue to explore this issue during (b)(2) implementation.
Coordination process for (b)(2) planning and implementation should be memorialized in an agreement.	DFG	The Decision provides greater detail on the process for working with stakeholders and other agencies, particularly DWR and DFG in the planning and implementation of (b)(2) actions. Interior is willing to consider negotiating a specific MOU reflecting this process, if the state agencies believe the process outlined in the Decision does not provide sufficient process documentation.
Decision should define how (b)(2) actions will adjust to new public trust allocations for instream use.	DFG	The statute requires Interior to dedicate and manage (b)(2) yield <i>annually</i> , which makes (b)(2) an inherently flexible tool that necessarily will adjust to new hydrological and biological information, including public trust allocations.
Reducing Interior's obligation to makeup SWP losses when SWP pumps upstream releases provides a disincentive for SWP to cooperate with Interior in implementing (b)(2). Need to renegotiate COA.	DWR	Interior understands DWR's perspective on credits for upstream releases. Interior will continue to pursue this issue in our anticipated negotiation of the COA. Interior looks forward to working with DWR to resolve the issue on an interim basis before proceeding to a full COA negotiation, where a broad array of new project operating conditions will need to be addressed.
Interior should commit to a well-defined process for state-federal coordination.	DWR	Agreed. The Decision provides additional detail as to how Interior and state agencies have agreed to proceed in developing and implementing (b)(2) each year.

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What happens if use of the entire 800,000 AF is not practical or cannot be accomplished in cooperation with SWP?	DWR	Interior will implement all parts of (b)(2), including the provisions for dry-year reductions and release of some (b)(2) water for other purposes when not needed. The statute's requirement of <i>annual</i> dedication and management demands that Interior respond to situations where actual use of the full 800,000 AF is difficult or impossible on a case-by-case basis. While Interior understands DWR's concerns, it is committed to using all of its flexibility to accomplish full (b)(2) implementation.
Interior and DWR should work together in calculating the use of (b)(2) water.	DWR	Agreed. The Decision reflects additional refinements that include joint estimations of (b)(2) use. The 1999 accounting used the number that DWR provided for how much it had used in cooperating with Interior on (b)(2) implementation.
Interior will have to manage carefully the CVP deliveries during the irrigation season to avoid the San Luis Reservoir "low point" and not unnecessarily reduce allocations.	DWR	Agreed. Interior and DWR have formed an interagency team of operators to review the forecasts and allocations of (b)(2) actions. In addition, the B2IT will coordinate with the CALFED Ops Group regarding (b)(2) forecasts, allocations and other operational issues.
Interior should develop, in advance, sources of supply for repayment of SWP water lost due to (b)(2) cooperations	DWR	The Decision reflects Interior's commitment to work with DWR early in the water year to forge a plan for make-up of the SWP's export reductions.
Interior should reimburse DWR for increases in SWP power costs due to (b)(2) actions.	DWR	Agreed. Interior and the State will form an interagency team, for estimating and reviewing power costs. Interior is committed to reimbursing the state for such costs.

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Interior should commit to develop in CALFED additional actions to fill the CVP share of San Luis Reservoir by early spring.	DWR	Interior will continue to work in CALFED, particularly through the Water Management Development Team, to develop new options for increasing water supply for all beneficial uses.
Interior should acquire water to make-up for lost CVP contractor deliveries, if the CVP's WQCP responsibilities exceed 450,000 AF in 2000 and the Accord is not extended.	DWR	Traditionally, Interior has fulfilled its water quality responsibilities by reducing the CVP yield delivered to contractors. Interior has no plan, at this time, to acquire water to make-up for such water quality responsibilities. Interior notes that those responsibilities may change when the SWRCB issues its WQCP implementation plan.

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There is no relationship between proposed accounting methods and the baseline yield.	EBMUD, SLDMWA, CFBF, Agricultural Water Contractors	<p>Interior has calculated the CVP yield in accordance with the statutory definition. The accounting of the amount of yield dedicated annually does not affect the determination of the underlying yield, because the statutory definition of yield incorporates specific conditions that are not affected by subsequent actions to use the dedicated water.</p> <p>Consistent with pre-1992 CVP practice, Congress defined CVP yield based on the 1928-34 period to ensure that 800,000 acre-feet of CVP's core supply would be used for (b)(2) purposes, not only in critically dry years but in wetter years as well. The calculation of CVP yield for (b)(2) purposes is a one-time action, while the dedication and management must be annual, based on the hydrologic conditions for the current year.</p> <p>Due to the complex nature of CVP operations and the variability of hydrologic conditions, each metric used for accounting requires a different explanation for why it is an accurate measure of the use of CVP "yield," as that term is defined in (b)(2). The Decision provides those explanations.</p>

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Interior must coordinate closely with DWR in implementing fishery actions.	SWC, DWR	Interior agrees. Interior already coordinates closely with DWR and DFG in implementing (b)(2), as required by the statute. Due to the short Court-imposed time line for developing the proposed (b)(2) metrics, Interior was able to consult with the state only once before issuing the Proposed Decision. Since that time, Interior has met with DWR and DFG several times to chart a course for the 1999-2000 water year. It is intended that near the beginning of each water year, both state and federal agencies will have a plan for implementing (b)(2) for that year, which would be adjusted as hydrological or biological conditions change. A process for assuring that effective coordination occurs with DWR and DFG, as well as with interested stakeholders, has been incorporated into the final decision in response to public comments and the consultation with the State.

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Allows “extraordinary discretion” to use (b)(2) water for secondary (b)(2) purposes (i.e. ESA and Clean Water Act requirements), leaving little available for CVPIA restoration.	Environmental Groups	<p>The statute requires Interior to “dedicate and manage <i>annually</i>” (emphasis added), which provides broad discretion and requires Interior to use that discretion to respond to the unique hydrological and biological conditions each year.</p> <p>Consistent with the language in the statute, Interior will continue to use the (b)(2) water for the primary purpose of implementing the fish, wildlife, and habitat restoration purposes of the Act, particularly anadromous fish restoration. It should be noted that the Delta water quality control plan include standards that promote restoration of certain fish. As for ESA uses, Interior plans to use water generally for planned, not reactive, actions that help endangered species.</p> <p>In response to comments on the broad discretion, Interior has included in the final decision a description of a process that Interior plans to follow in developing the annual (b)(2) fishery plan. That process will include participation by project operators, and project and resource agency biologists, and will provide for stakeholder discussions. In exercising its discretion, Interior will carefully consider stakeholder input it received in the process will be followed.</p>



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Use of the (b)(2) water for WQCP requirements and post-enactment Endangered Species Act requirements is “double counting.”	Environmental Groups	Interior disagrees. The statute clearly authorizes the use of (b)(2) water to “assist” in meeting Water Quality Control Plan requirements and to “help” meet post-enactment Endangered Species Act obligations of the Central Valley Project. In 1999, Interior has applied (b)(2) water to some -- but not all -- ESA actions. Moreover, applying (b)(2) water to ESA and WQCP purposes is not double-counting.
Interior should require findings of no need for primary purpose before using (b)(2) water for secondary purposes	Environmental Groups	Interior disagrees. The CVPIA delegates substantial discretion to Interior agencies in managing the (b)(2) supplies. Apportioning such supplies among the different purposes is a cornerstone of that discretion. Requiring a finding of no need before (b)(2) water could be used for uses other than the primary purpose would unnecessarily hinder the flexibility provided by the statute to manage the dedicated water in a manner most beneficial to the environment. Therefore, such findings are neither necessary nor reflective of wise resource management..
The SWP receives a windfall by CVP reimbursing water used for (b)(2) and then SWP pumping (b)(2) upstream releases.	Environmental Groups	Interior remains committed to the principle that use of (b)(2) water cannot impact the SWP. Interior, however, recognizes that upstream (b)(2) releases could lead to a SWP windfall unless otherwise accounted for. Interior will seek, as part of renegotiating the COA, to receive a credit toward any make-up obligation for any increases in SWP supply that result from (b)(2) releases.

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Interior is obligated to use (b)(2) for all water quality and ESA requirements.	SLDMWA	Interior disagrees. The statute does not support this contention. Implementation of the fish, wildlife, and habitat restoration provisions of the statute is clearly identified as the “primary” purpose for which the (b)(2) water is to be used. Post-1992 ESA obligations and water quality are secondary purposes. Further, those secondary purposes are framed in terms of “helping” and “assisting,” suggesting that Congress understood that water other than that dedicated under (b)(2) would be used for those purposes.
November 19, 1997 legal opinion by Interior’s Solicitor is incorrect.	Smiland & Khachigian	The November 19, 1997, legal opinion addressed the November 20, 1997, Administrative Proposal. The Interim Decision of July 14, 1999, and the final decision adopt a different accounting system than that analyzed in the November 19, 1997, Solicitor’s opinion.
Contradicts the terms of the Bay/Delta Accord.	State Water Contractors	Interior disagrees. The Bay-Delta Accord language cited by the State Water Contractors describes an intention to use CVP/SWP operational flexibility to eliminate, to the extent possible, loss of project water supplies. Interior agencies have worked continuously through the CALFED operations group to identify and implement project flexibility options. The Accord does not commit Interior to using (b)(2) water for SWP make-up. Indeed, the Accord provides for a credit to (b)(2) only for use of CVP water. (See “Institutional Agreements, paragraph 3”, of the Accord.)

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CVPIA goal is balance, reasonableness, and sustainability	EBMUD, BDUC, SMUD, CFBF, SWC, SCVWD	Interior agrees that one of the purposes of the CVPIA is to “achieve a reasonable balance among competing demands” for use of CVP water. One of the means by which Congress sought to achieve that balance was by dedicating the (b)(2) water to fish, wildlife and habitat purposes. Interior’s decision reflects a balanced, reasonable implementation of its (b)(2) mandate, considering the significant reallocation of CVP yield that Congress enacted.
Use the contract year in accounting.	WAPA, SMUD	Interior disagrees. As indicated in the Decision, Interior cannot use the March through February accounting period and manage (b)(2) water with any degree of efficiency and accuracy. Environmental use, unlike agricultural contract use, is year round and knowledge of the hydrology well before the accounting year is over is essential. The October through September period provides this knowledge and promotes certainty. Further, the calculation in early February of the amount of (b)(2) water used for upstream actions in the winter months will be made in sufficient time for the agencies to make allocation decisions in a timely fashion.
Improperly allows diversion of (b)(2) water for consumptive purposes without making the required findings.	Environmental Groups	Interior disagrees. Water used for (b)(2) purposes, once it has fulfilled that purpose, is available for capture and reuse as described in the Interim Decision. This is consistent with the March 1999 Memorandum Opinion of the Court. That is a different situation than would occur under Section 3406(b)(2)(D) in which Interior “finds” that the water is not needed at all and not used and subsequently made available for other project purposes.

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Proposed Decision reflects lack of public process and a need for cooperation and coordination.	WAPA, SMUD	<p>Interior has hosted an extensive public process relating to the management and accounting for (b)(2) water since 1993. Many viewpoints – including most of the comments reflected herein – have been expressed, considered and addressed. Due to the compressed schedule for developing the Interim Decision imposed by the Court, Interior waited until it could present a proposal for public consideration before inviting additional public comment.</p> <p>Interior will continue to engage other agencies and the public as it annually dedicates and manages the (b)(2) water, particularly through the CALFED operations group. In response to comments regarding the desire for public comment and agency coordination, Interior has set out in its Final decision its plan for the process by which (b)(2) management actions will be developed and implemented. That plan involves extensive state and federal coordination, as well as stakeholder and public participation.</p>
Clarify whether water can be banked, transferred or exchanged during fall period.	EPA, BDUC, SDWA	<p>The issue is clarified in the final decision. Banking, transfers, and exchanges of (b)(2) water can occur in the 10/1-1/31 period as well as in the 2/1-9/30 period, provided the water is identified for banking or transfers before it is released. Use of water for such purposes will be counted as it is released, not relying on the change in storage metric.</p>

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Water banked or transferred/exchanged under (b)(2) should not have last priority in use of storage and export facilities.	EPA	The accounting for such actions takes place at the time it is banked or transferred. Allowing the action to interfere with the storage, diversion, or delivery of water for other purposes of the CVP would cause additional impacts, which would then be subject to further accounting.
Underestimates yield, by including biological opinion for winter-run chinook salmon, modified D-1400 flows on the American River, and Clear Creek flows.	SLDMWA	<p>Interior disagrees. Interior used the express terms of (b)(2) to determine which operational requirements applied. The winter-run salmon consultation between NMFS and Reclamation was initiated and a temporary opinion was in place before the CVPIA was enacted. Moreover, the minimum temperature was imposed by the SWRCB in 1990.</p> <p>As for Modified D-1400 flows, the CVP has had an agreement with the State for more than two decades to provide Modified D-1400 flows when hydrological conditions allow.</p> <p>Clear Creek flows similarly are consistent with historical modifications to minimum flows provided by agreement with the California Department of Fish and Game.</p>
Yield calculation is inconsistent with previous methods of yield calculation	CCWD, SLDMWA, SWC	Interior agrees that the yield calculation is not identical to that historically performed. However, that difference is mandated by the language of the statute, which requires different methods for calculating yield for (b)(2) purposes. Interior calculated yield in accordance with the statutory definition of yield – “delivery capability” adjusted for the 1992 operating requirements.

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Analysis of impacts from this proposal does not appear in CVPIA PEIS.	CCWD, WAPA, SMUD	The nature of the (b)(2) mandate does not require compliance with NEPA before implementation, as confirmed by the Ninth Circuit Court of Appeals. The draft PEIS displays the impacts of implementation of (b)(2) under scenarios contemplated at the time that draft was prepared. The PEIS is being evaluated to determine whether or not the impact analysis will need to be supplemented to display the impact of the final (b)(2) accounting decision. That review is not yet complete, however.
No CVP power impacts have been evaluated.	WAPA, SMUD,	Implementation of (b)(2) is a statutory mandate that, as the Ninth Circuit Court of Appeals has affirmed, cannot and need not wait for analysis of impacts under NEPA. Nonetheless, the power impacts of (b)(2) implementation under scenarios contemplated at the time the PEIS was drafted are displayed in the draft PEIS.
Causes water supply and water quality impacts to Los Vaqueros Reservoir.	CCWD	CCWD may share in annual reductions to its CVP water supply as a result of (b)(2) actions. Patterns of pumping may also change as a result of (b)(2) actions, which may affect CCWD's separate pumping. As Interior annually dedicates and manages its (b)(2) supplies, it will work through the CALFED Ops Group to try to address CCWD's Los Vaqueros concerns.
Restricts flexibility of system, particularly in wet years.	SLDMWA, Agricultural Water Contractors, BDUC, SCVWD	The dedication of CVP yield under (b)(2) places an additional demand on the CVP. Such additional demands inherently reduce the system's flexibility. In order to maximize flexibility, within the requirements of the statute, operation of facilities, including export pumps, will be forecasted sufficiently in advance to allow for decisions about allocations and review of delivery schedules to avoid interruptions to CVP water supplies.

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Interior should bank unused (b)(2) water, particularly in 1999.	Environmental Groups	Decisions as to banking (b)(2) water will consider a host of related hydrological and biological issues. Assuming the Court's Order to use precisely 800,000 AF during the March-February period remains in effect, Interior intends to use the remaining amount of 1999 (b)(2) supplies by February 29, 2000.
The (b)(2) account should get credit for pumping increases due to AFRP actions and for the additional natural inflow stored due to reservoir levels reduced by upstream releases.	Environmental Groups	CVPIA did not create a (b)(2) water account so it could build fishery restoration water resource levels. Instead, it committed a set amount of water to be used every year, unless the entire amount is not needed. Supplies for (b)(2) therefore will not generally receive increases. Moreover, the example's assumption that there is more water available due to (b)(2) releases is incorrect. The (b)(2) releases merely reduce subsequent flood control releases.
Attachment 2 needs more detail, with more scientific information and a default fishery action plan	Environmental Groups	Attachment 2 was not intended to be a comprehensive compilation of the biological background for the measures, but instead was intended to provide stakeholders with summary information about the range of fishery restoration actions for which the (b)(2) water could be used. Substantial scientific documentation for those fishery measures can be found in AFRP documents and CALFED studies. Interior does not believe it is workable to develop a "default" fishery action plan, given that the hydrologic and biological conditions in every year are different and hence the needs of the fishery will also be different. Attachment 2 now describes a coordination process where Interior will convene two public workshops (fall and winter) to present and discuss the annual (b)(2) fishery action plan.

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Does not provide equal priority to other project uses, with contractors being harmed more than fishery purposes.	SLDMWA	While the CVPIA established fish and wildlife purposes on an equal footing with irrigation and domestic purposes, CVPIA's other mandates gave specific directions that were intended to balance the new fish and wildlife purposes with the well-established other project purposes.
Using all 800,000 AF when there is little or no environmental benefit from using some portion is punitive.	BDUC	Interior does not intend to act punitively. It will implement all provisions of (b)(2), including the option of allocating (b)(2) water to other Project purposes when it is not needed.
Monthly changes in the annual (b)(2) operations plan will make CVP deliveries to contractors too uncertain.	SLDMWA	Effective management of the (b)(2) supplies requires Interior to respond to changes in hydrological or biological conditions. Interior believes that it has developed a process for developing and implementing the (b)(2) plan in a manner that will allow allocation decisions to be made in a timely fashion so as to provide sufficient planning time to contractors.
Extend change-in-storage metric to entire water year.	Environmental Groups	Stopping use of the change-in-storage metric in February each year is necessary for effective management of CVP yield for (b)(2) and all its other purposes.



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Change-in-storage metric means export water supplies will be reduced in wet years.	SLDMWA, Agricultural Water Contractors, BDUC, CBBF	The Decision describes the dedication and management of the 800,000 acre-feet annually, as Congress required in the CVPIA. In implementing the Decision, Interior anticipates that all 800,000 acre-feet will be dedicated each year, subject to temporary reductions during critically dry years. Interior agrees that operations in wetter hydrologies may provide the desired upstream conditions for fish. In such circumstances, additional (b)(2) water could be provided through export reductions to improve Delta habitat. Under no circumstances would the usage of (b)(2) water, accounted for pursuant to the Accounting Methodology, total more than 800,000 acre feet. The Secretary, however, may consider whether to use the (b)(2) water for other project purposes when it is not needed, as provided by the statute.
Upstream releases should not be available for export by the CVP.	CDWA	Congress dedicated the (b)(2) water for environmental restoration purposes. If FWS does not specify that the release is needed for Delta outflow and does not take measures to protect the specified flows, then there would be no identified biological basis for not allowing the water to be available for recapture and reuse by other downstream water rights holders including, but not limited to, the CVP and SWP. While Interior is committed to fully using the (b)(2) water for environmental restoration purposes, it is also committed to not administering the provision in a punitive fashion.
San Luis Reservoir water should be used for (b)(2) actions.	CDWA, SDWA	Because San Luis depends on export pumps – and not natural inflow –to increase its available water, releases for fishery actions would cause additional impacts on CVP yield, which would then be subject to accounting.

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When upstream releases can be offset by hydrology, then Interior will have to rely on greater export curtailments as the most reliable mechanism for using all the (b)(2) water.	SCVWD, SLDMWA, Agricultural Water Contractors	Exports will not be reduced based only on a need to use the entire 800,000 AF. Biological justification will be required. For example, adjusting export levels provide both direct and indirect habitat improvements and benefits to fisheries in the Delta. Export adjustments promote Delta fishery habitat and reduce entrainment at the pumps.
Export contractors reliant on Delta pumps suffer the most.	CFBF, SCVWD, Agricultural Water Contractors	Export contractors are vulnerable because deliveries to them are dependent on exports from the Delta, which is the most delicate and vulnerable part of the watershed's ecosystem. Because of the importance of the Delta ecosystem in reaching the restoration goals of the statute, many of the fishery actions are necessarily directed toward Delta habitat and fishery survival. Thus, while impacts are not intentionally directed toward the export contractors, those impacts do tend to affect the export contractors.
Protect rights of SWP and its contractors	SWC	Interior's policy is that (b)(2) actions will not be permitted to adversely affect the SWP, and that any adverse impacts will be made up. Interior will work closely with DWR and DFG as it proceeds in annually dedicating and managing the (b)(2) supplies.

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Contradicts COA.	SWC, SCVWD, DWR	Interior and the State acknowledge that the COA must be renegotiated to address the new standards in the Water Quality Control Plan, Endangered Species Act biological opinions, and CVPIA. This process is expected to take a significant effort. In the interim period the agencies will seek agreement on equitable sharing of water supplies and obligations in the basin. Interior and the State of California intend to evaluate how operating in accordance with the Decision affects the sharing and what changes in the COA may need to be pursued.
Work within the CALFED process on the Delta, EWA	BDUC, SCVWD , CCWD	The provisions for water banking, transfers/exchanges are intended to increase the flexibility in meeting the objectives of a CALFED water management strategy. The (b)(2) supplies will form part of the baseline from which CALFED's Environmental Water Account and its water management strategy will be developed. In response to comments, Interior has modified the Decision to more fully describe the process for developing and implementing the annual plan for (b)(2) water, so as to include other agencies and stakeholders, in a manner that will be consistent with CALFED.
The modeling assumptions used in calculating the pre-CVPIA yield should not assume that M&I contractors could sustain shortages of 25 Percent.	CCWD	Interior disagrees. The criteria for reducing the 800,000 acre-feet is based on hydrologic conditions that occur only in the driest 10 percent of the years studied. The criteria for shortages to M&I and agricultural contractors are based on apportioning available water supplies, which are affected by other constraints in addition to hydrologic conditions.

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Operations of New Melones must abide by the Bureau of Reclamation's permit requirements.	SDWA, CDWA	Interior generally operates New Melones consistent with the terms in its permits.
The New Melones Interim Operations Plan ignores the Bureau of Reclamation's permit requirements.	SDWA	The New Melones Interim Operations Plan is not at issue in the Decision. Nonetheless, Interior disagrees that the Interim Operations plan is inconsistent with the permit requirements, and it should be noted that these requirements have been met since adoption of the Interim Operations Plan for the short-term.
There is no basis for "relaxing" the water quality standard in the baseline. Water quality is not met in over 50 percent of the years.	SDWA, CDWA	The Decision does not purport to "relax" any water quality standards. Studies of New Melones' yield, including the one attached to the Decision, show that New Melones does not have enough water to sustain all purposes – or even minimum permit requirements – at desired levels through an extended drought. In those times, Interior uses all available water for permit requirements.
1987 DFG agreement only allows for fishery releases in excess of 98.3 TAF after water quality and contractor needs are met.	SDWA	Interior is fulfilling its water quality responsibilities and attempting to satisfy contractor demands from New Melones, recognizing that (b)(2) made a significant reallocation of Project yield. The New Melones authorization statute subordinates exports to out-of-basin contractors to in-basin needs, which include Vernalis water quality and instream fishery flows in the Stanislaus River. Interior intends to develop a long-term operations plan for New Melones, with clear operating criteria for available water supplies in the Stanislaus Basin.

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The estimated needs for water quality are understated.	SDWA	Providing water quality at Vernalis and fulfilling the 1987 DFG agreement come before any use of Project water from New Melones. The needs for water quality are not addressed by this (b)(2) Decision. The implementation of the Decision in the Stanislaus Basin will be modeled as part of developing the long-term operations plan for New Melones.
Water recaptured and exported cannot be considered a decrease in yield.	SDWA	Comment noted. Measuring use of (b)(2) supplies does not necessarily require a reduction in yield. It does, however, require that 800,000 acre feet of yield be used for (b)(2) purposes.
On what basis does Interior exclude the (b)(2) releases from the export/inflow ratio?	SDWA	To assist the State in its efforts to protect the Bay/Delta and to help meet the export/inflow ratio pursuant to the WQCP requirements, the CVP will use a portion of the (b)(2) water. Additional (b)(2) releases in the February-September period are generally intended to flow through the Delta and provide additional protection and restoration for anadromous fish and other estuarine species. If the supplemental (b)(2) releases were included as inflow in the export/inflow ratio, a portion of the water could be exported and the full benefit of the outflow through the Delta would not be realized.
Clarify the reference in the first paragraph of Section IV regarding “water quality requirements.”	SDWA	This refers to “water quality requirements” contained in the 1995 WQCP, and the text has been clarified.

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How can there be any New Melones yield if water quality requirements are being met in less than half the years?	SDWA	In some years of an extended drought, New Melones may provide no Project yield. In those years, without Project yield, no water from New Melones would be available for (b)(2) uses. Conversely, in many years, there is sufficient water from New Melones for both water quality and Project yield, which would include yield for (b)(2). As Interior implements the Decision and runs models in developing a New Melones long-term operations plan, this issue will receive further analysis.
Operating the CVP in an integrated manner is contrary to permit conditions.	SDWA	Congress explicitly defined CVP for CVPIA purposes, indicating that Congress supports integrated management of the CVP. To the extent that the CVP water right permits are not consistent with integrated management, Interior anticipates that those permits will be addressed by the SWRCB as part of Reclamation's petition for consolidated place and purpose of use.
Does the calculation of yield and the yield assumptions understate (b)(2) and overstate yield by assuming a 2020 level of development and full contract amounts?	SDWA	No. Using the 2020 level of development and full contract amounts accurately reflects the delivery capability of the project in light of expected changes in the coming years.
There is no basis in California water rights law for limiting (b)(2) water taken from exports to 640 TAF.	SDWA, CDWA	While the limitation is not statutorily mandated, Interior believes that placing such a limitation on exports during the "low point" for CVP storage in San Luis Reservoir is the most efficient means of managing the water supplies dedicated under (b)(2) while at the same time not affecting export contractors unnecessarily. Management of the (b)(2) water respects water rights, but water rights do not dictate how Interior manages Project supplies.

**Response To Comments Regarding (b)(2) Implementation Decision**  
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Comment	Organization	Response
The 800,000 acre-feet should be put into a natural stream and allowed to flow out the Golden Gate to serve fish and wildlife.	Citizen	Some of the (b)(2) supplies will be used for this purpose. The decision regarding how the water will be managed, however, will be based on gaining the greatest biological benefit, rather than following one set management approach in all years.
Meeting Vernalis water quality standards by drawing on upstream sources other than the Stanislaus River would fulfill Congress' intent that the 800,000 acre-feet add benefits over and above those resulting from requirements.	CDWA	Some (b)(2) supplies can be used to assist the State in its efforts to protect the waters of the Bay/Delta. Use of upstream sources, including water from the Delta-Mendota Canal and/or the San Luis Reservoir, could cause additional impacts to CVP yield.
Water recaptured and exported could cause a real impact within the "areas of origin," while the south of Delta export contractors receive a windfall.	CDWA	Comment noted. Interior does not believe that water recaptured and exported would create a windfall for delta exporters. Instead, allowing such recapture and export when the water is not otherwise biologically needed is consistent with the terms of the statute and consistent with making the best use of a limited resource.
California Water Code Sections 11460, et. Seq., requires that (b)(2) water be obtained first from reduction of exports from the Delta or reduction in yield of San Luis Reservoir.	CDWA	Interior disagrees. While Interior respects California water rights law, Interior does not believe that the area of origin statutes referenced in the comment place constraints on how Interior uses its discretion in implementing (b)(2).

**Response To Comments Regarding (b)(2) Implementation Decision**  
October 5, 1999

Comment	Organization	Response
The limitation of 640,000 acre-feet on reduction of exports from the Delta for Feb 1 to Aug 31 is an action which favors export contractors.	CDWA	Comment noted. The provision for limiting export reductions to a maximum of 640,000 AF is based on an 80%-20% ratio of unconstrained water supply capability before and after the low point. As noted above, while the limitation is not statutorily mandated, Interior believes that placing such a limitation on exports during the "low point" for CVP storage in San Luis Reservoir is the most efficient means of managing the water supplies dedicated under (b)(2) while at the same time not affecting export contractors unnecessarily.
Interior failed to comply with Administrative Procedure Act.	SWC	Interior disagrees. The Interim Decision was compiled in response to a court-imposed deadline, and hence was not subject to the APA. The Interim decision was then released for public comment, distributed widely to all interested parties, and actual notice given to affected interests. Further, the Decision interprets the statutory mandate relating to how the government manages its own assets. It does not "impinge" on DWR's water rights or purport to prohibit state exports of water. Interior recognizes that the SWP's actions are necessarily voluntary, and the Decision indicates the direction Interior will seek to pursue when it consults with DWR and DFG.
Interior should implement yield enhancement actions, as provided by CVPIA Section 3408(j).	EBMUD	Interior continues to consider ways to enhance the CVP's yield.



**Response To Comments Regarding (b)(2) Implementation Decision**  
October 5, 1999

Comment	Organization	Response
Reclamation should reconsult with NMFS as to the 1.9 MAF carryover storage requirement, now that the Temperature Control Device is installed.	EBMUD	Comment noted. This requirement is reflected in the Decision's yield analysis as a modeling tool. Actual Shasta operations are controlled more by the 56-degree temperature requirement.
Water from San Luis Reservoir would be advantageous for providing fish flows in the San Joaquin River.	CDWA	Comment noted. However, before initiating such an approach Interior would need to determine that such water usage was biologically beneficial, and did not raise secondary impacts. To date, Interior has not felt that such use was the best approach biologically or operationally.

### **List of Abbreviations for Response To Comments**

Agricultural Water Contractors - Panoche Water District, Plain View Water District, Pacheco Water District, Westlands Water District, James Irrigation District, Banta-Carbona Irrigation District, West Stanislaus Irrigation District, Centinella Water District, San Luis Water District (These agencies sent very similar letters with the same comments, and relied on the comments from SLDMWA.)

(b)(2) - Section 3406(b)(2) of the Central Valley Project Improvement Act (Public Law 102-575)

BDUC - Bay Delta Urban Coalition

CCWD - Contra Costa Water District

CDWA - Central Delta Water Agency

CFBF - California Farm Bureau Federation

COA – Coordinated Operating Agreement

DFG - California Department of Fish & Game

DWR - California Department of Water Resources

EBMUD - East Bay Municipal Utility District

Environmental Groups - Save San Francisco Bay Association, Environmental Defense Fund, Natural Resources Defense Council, Pacific Coast Federation of Fishermens' Associations, California Sportfishing Protection Alliance, The Bay Institute

EPA- United States Environmental Protection Agency

ESA – Endangered Species Act

SCVWD - Santa Clara Valley Water District

SMUD - Sacramento Municipal Utility District

SLDMWA - San Luis & Delta-Mendota Water Authority

SDWA - South Delta Water Agency

Smiland & Khachigian - Smiland and Khachigian law firm

SWC - State Water Contractors

SWRCB – State Water Resources Control Board

WAPA - Department of Energy, Western Area Power Administration

WQCP - 1995 Delta Water Quality Control Plan